

BOARD OF ZONING APPEALS

MINUTES

6:30 PM

October 15, 2014

City Council Chambers

MEMBERS PRESENT: Bernie Bossio, Leanne Cardoso, Bill Burton, George Papandreas and Jim Shaffer.

MEMBERS ABSENT: None

STAFF: Christopher Fletcher, AICP

I. CALL TO ORDER AND ROLL CALL: Bossio called the meeting to order at 6:30 PM and read the standard explanation of the how the Board conducts business and rules for public comments.

II. MATTERS OF BUSINESS:

A. Minutes for the September 17, 2014 Hearing: Shaffer moved to approve as presented; seconded by Papandreas. Motion carried 4-1 with Burton abstaining due to his absence.

III. UNFINISHED BUSINESS: None

IV. NEW BUSINESS:

A. CU14-10 / The Dancing Fig / 2862 University Avenue: Request by Michael Bowyer for conditional use approval of a "Restaurant, Private Club" use located at 2862 University Avenue; Tax Map 11, Parcel 119; B-1, Neighborhood Business District.

Fletcher read the Staff report.

Bossio recognized Janet Ferraro of 1464 Mayfield Avenue who asked for approval of the conditional use petition as it was before for the location on High Street and explained the service and concept will remain the same. Brian Maxwell will be the beverage manager who was trained in New Orleans and specializes in craft cocktails.

Bossio inquired about the restaurant hours. Ferraro explained the hours of operations.

There being no further comments or questions by the Board, Bossio asked if anyone was present to speak in favor of or in opposition to the request. There being none, Bossio declared the public hearing closed and asked for Staff's recommendations.

Fletcher read the Staff recommendations.

Cardoso referred to the Staff recommendations for hours of operations and asked how the condition could be worded to prevent restaurant from being open every day of the week.

Fletcher asked if condition should be worded to just include the week days in the event that Sunday brunches don't work out. Cardoso agreed.

Shaffer made a motion to grant the one-year bona-fide restaurant for CU14-10; seconded by Burton. Motion carried unanimously.

Papandreas made a motion to find in the affirmative for the all the Findings of Facts for CU14-10 as revised by Staff; seconded by Burton. Motion carried unanimously.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No. 1 – Congestion in the streets is not increased, in that:

A restaurant is currently on the same property as the proposed restaurant and therefore an increase in trip generation from the previous *Zenclay Café* is not anticipated.

Finding of Fact No. 2 – Safety from fire, panic, and other danger is not jeopardized, in that:

The site is currently in use for the same purpose and all building and fire related codes must be observed as a part of Certificate of Occupancy permitting.

Finding of Fact No. 3 – Provision of adequate light and air is not disturbed, in that:

The site is currently operating in the same capacity and not additions to the existing structure are proposed that would alter current sunlight distribution or air flow patterns.

Finding of Fact No. 4 – Overcrowding of land does not result, in that:

No new structures will be built as a part of the proposed conditional “Restaurant, Private Club” use.

Finding of Fact No. 5 – Undue congestion of population is not created, in that:

The proposed conditional “Restaurant, Private Club” use does not include an increase in residential dwelling units within the existing structure.

Finding of Fact No. 6 – Granting this request will not create inadequate provision of transportation, water, sewage, schools, parks, or other public requirements, in that:

The proposed restaurant use should not require additional public utilities or services that were not already in place for the former *Zenclay Café* restaurant establishment.

Finding of Fact No. 7 – Value of buildings will be conserved, in that:

The proposed “Restaurant, Private Club” establishment will occupy a previous restaurant space, which does not appear to have adversely affected property values within the immediate area.

Finding of Fact No. 8 – The most appropriate use of land is encouraged, in that:

The proposed “Restaurant, Private Club” establishment will occupy a previous restaurant space, which does not appear to have adversely affected neighboring land uses.

Cardoso moved to approve CU14-10 with the following conditions:

1. That the petitioner must maintain compliance with all supplemental regulations set forth in Article 1331.06(27) of the Planning and Zoning Code.

2. That the petitioner must obtain permitting as a “restaurant” from the Monongalia County Health Department under the *Monongalia County Clean Indoor Air Regulations*.
3. To ensure that the petitioner’s business description and plans are executed as described and considered in granting the one-year “bona fide restaurant” waiver, the subject “Restaurant, Private Club” use must:
 - a. Be open no later than 11:00 AM on the weekdays the establishment is open to the public for the purpose of serving lunch as described in the menu submitted with the petitioner’s condition use application.
 - b. That the petitioner shall voluntarily submit all necessary financial information to the City for the subject establishment following its first twelve (12) months of operation as a “Restaurant, Private Club” use to ensure compliance with Article 1331.06 (27) (e) provisions, which requires the sale of food and non-alcoholic beverages to comprise a minimum of 60 percent of total gross sales of all food and drink items in each calendar month.
4. That the beneficiary of this conditional use approval is specific to the business organization that will own *The Dancing Fig* restaurant establishment at the time of Certification of Occupancy issuance. Said beneficiary may not be transferred without prior approval of the Board of Zoning Appeals.

The motion was seconded by Papandreas and carried unanimously.

Bossio reminded Ms. Ferraro that the Board’s decision can be appealed to Circuit Court within thirty days of receiving written notification from the Planning Division and that any work related to the Board’s decisions during this period would be at the sole financial risk of the petitioner.

- B. V14-41 / Germata / 324 Maple Avenue:** Request by Francis Mulkeen, on behalf of Michael Germata, for variance relief from Article 1331.08(B) as it relates to the maximum height of fences at 324 Maple Avenue; Tax Map 36, Parcel 525; R-1A, Single-Family Residential District.

Fletcher read the Staff Report.

Bossio recognized Michael Germata of 324 Maple Avenue who provided the Board members with additional pictures to further explain the location and purpose for the proposed fence. Germata explained that the request for increased height is to compensate for the decrease in property as it slopes from Jackson to Maple Avenue and will ensure additional privacy in the back yard area.

Bossio asked if the fence would be sloped or stepped. Germata explained the fence would be stepped accordingly with the slope of the land.

There being no further comments or questions by the Board, Bossio asked if anyone was present to speak in favor of or in opposition to the request. There being none, Bossio declared the public hearing closed and asked for Staff recommendations.

Fletcher read the Staff recommendations.

Shaffer expressed the request is not unreasonable as it is a privacy fence.

Burton noted the eight (8) foot section would not be visible from the road and has no problem with the proposed fence.

Cardoso asked if there would be an appreciable difference with the additional 1.5 foot fence variance. Shaffer referred to a past variance petition in the Suncrest area and noted the structure was below grade by a few feet and the variance was approved.

Bossio referred to the Staff Report and noted the denial recommendation was based on what is stated in the code.

Fletcher noted that years ago the Board had inquired about raising the height limit standard for fences to 8 feet. He referred to the prior variance request in the Suncrest area and noted the building was above grade and in order for the fence to be installed properly it had to go higher than the 6.5 foot height limit.

Fletcher referred to the petitioner's illustrations and noted the proposed fence would not prevent the neighboring property owners from looking over the fence from their side door. Cardoso agreed.

Bossio suggested erecting the fence along the back patio area for privacy purposes. Burton stated that if the owners had small children, they would not be able to watch them past the fence if it they erected along the patio area.

Burton asked if the proposed fence would be encompassing the whole yard. Bossio noted the fence would only be on the side property line with a 35 foot portion being eight feet.

Cardoso stated she did not see enough of a slope in the property to justify increasing the height of the fence.

Bossio referred to the Findings of Facts and inquired if the property owner meets the benchmark to grant variance relief.

Cardoso noted the slight slope of the yard is similar to all yards in Morgantown.

Papandreas expressed that he didn't see where there was significant impact to increase the height of the fence to the neighbors or the City and it would not infringe on the rights of others. It may make the fence more appealing by leveling at the top and stepping at the bottom.

Bossio stated if they approved this one then they would have to consider all future requests for 8 foot privacy fences as it sets a precedent.

Board members decided to review the Findings of Facts separately for Case No. V14-41.

Shaffer made a motion to find in the affirmative for Finding of Fact 1 as revised by Staff; seconded by Papandreas. Motion carried unanimously.

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents because the fence is adjacent to a building and is for privacy only.

Shaffer made a motion to find in the negative for Finding of Fact 2 as revised by Staff; seconded by Cardoso. Motion carried unanimously.

Finding of Fact No. 2 – The variance DOES NOT arise from special conditions or attributes which pertain to the property for which a variance is sought as the predominate slope and physical features of the immediate vicinity does not appear to be unique to the petitioner's property.

Papandreas made a motion to find in the negative for Finding of Fact 3 as revised by Staff; seconded by Shaffer. Motion carried unanimously.

Finding of Fact No. 3 – The variance will NOT eliminate an unnecessary hardship and permit a reasonable use of the land because a hardship does not appear to exist that prevents the petitioner's pursuit of desired privacy. Alternate by-right, privacy measures might include incorporating lattice or similar fence design elements of ≤ 50% opacity between the 6.5-foot and 8-foot elevation heights and/or the planting of evergreen shrubs and/or bushes that can grow to the desired height.

Papandreas made a motion to find in the negative for Finding of Fact 4 as revised by Staff; seconded by Burton. Motion carried unanimously.

Finding of Fact No. 4 – Variance relief is NOT necessary to ensure that the purpose and intent of the maximum fence height standard is observed. Substantial justice is provided under the standard as the petitioner may pursue a fence height of eight (8) feet if designed as permitted by-right. Further, alternate privacy measures can be pursued.

Papandreas moved to deny variance request V14-41; seconded by Shaffer. Motion carried unanimously.

Bossio reminded Mr. Germata that the Board's decision can be appealed to Circuit Court within thirty days of receiving written notification from the Planning Division and that any work related to the Board's decisions during this period would be at the sole financial risk of the petitioner.

- C. V14-42 / Weatherly Plaza Realty Trust / 100 Hornbeck Road:** Request by Michelle Boyers of City Neon, Inc., on behalf of Weatherly Plaza Realty Trust, for variance relief from Article 1369 as it relates to ground signage at 100 Hornbeck Road; Tax Map 64, Parcel 1; B-5, Shopping Center District.

Fletcher presented the Staff Report.

Bossio recognized the petitioner's representative, Rudy Hoffert of 1095 Chaplin Hill Road, who stated his client recently purchased the property and is in the process of doing improvements, one of which is the proposed pylon sign.

Burton asked how many stores are in the plaza and if there are plans for expansion. Hoffert explained there are 12 total spaces with four unoccupied. There are certain regulations to the property and the proposed sign would be positioned so that people can see it.

Cardoso asked for a better illustration and explanation of the proposed sign. Hoffert referred to the Staff report and stated that split faced block would be used and the colors would be pulled from the design of the building.

Hoffert noted that both the Dollar General and Marachi Logo have already committed to renting spaces on the sign. The panels are removable and can be combined if a tenant would like a larger sign.

Bossio asked how this property was different from others that fall under the same requirements. Hoffert explained the location is different as it is not located along a main road and the sign would serve as a directory for people from out of town, such as college students.

Papandreas asked if the sign would be visible coming from Grafton Road. Hoffert stated the sign would only be visible when turning into the parking lot from 4 H camp Road.

Cardoso asked where the current Walmart sign is located. Hoffert explained the Walmart sign is located in the vacant lot off of 4H Camp Road.

Bossio asked if the Walmart sign met all codes and regulations. Fletcher explained that the Walmart sign was constructed and erected prior to annexation into the City.

There being no further comments or questions by the Board, Bossio asked if anyone was present to speak in favor of or in opposition to the request. There being none, Bossio declared the public hearing closed and asked for Staff's recommendations.

Fletcher read the Staff recommendations.

Papandreas made a motion to find in the affirmative for the all the Findings of Facts for V14-42 as revised by Staff; seconded by Burton. Motion carried unanimously.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

Other business establishments in Morgantown have existing multi-tenant post-and-panel style signs that exceed maximum height and area standards and are internally illuminated, which provides the type of visibility to the public for which the petitioner seeks to emulate and enjoy.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

It appears that the auto-dependent nature of the development and the commercial uses requires enough sign area and illumination for existing and future tenants of the existing shopping center. It appears that, given the number of tenants within the multi-tenant development, a monument sign that meets the maximum area and height standards would not permit a functional directory sign that can be legible from visitors arriving to the site by vehicle.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

The sign appears to be relatively consistent with other shopping centers throughout Morgantown including the Earl Core Road, Patteson Drive, and Van Voorhis Drive commercial corridors.

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

The sign should help to promote business for the tenants and the community. The addition of the

sign should serve to increase the market interest in the development and economic activity for existing and future tenants given the heavily auto-dependent nature of the development.

Papandreas moved to approve V14-42 with the following without conditions; seconded by Burton. Motion carried unanimously.

Bossio reminded Mr. Hoffert that the Board's decision can be appealed to Circuit Court within thirty days of receiving written notification from the Planning Division and that any work related to the Board's decisions during this period would be at the sole financial risk of the petitioner.

- D. V14-44 thru V14-49/ Highland Park Square / 502 Stewart Street:** Request by Michael Mills of Mills Group, on behalf of John Rice, for variance relief from Article 1345.06(C) as it relates to the proposed location of parking spaces at 502 Stewart Street; Tax Map 14, Parcels 450 and 451; B-1, Neighborhood Business District.

Fletcher presented the Staff Report.

Shaffer made a motion to combine cases V14-44 through V14-49; seconded by Burton. Motion carried unanimously.

Bossio recognized the petitioner's representatives, Juliana Lloreda and Michael Mills both of the Mills Group, who presented a Power Point presentation of the proposed project at Highland Park Square.

Bossio referred to the dumpster and asked if there was an agreement with the adjacent property owner. Mills confirmed.

Bossio asked for the size of the dumpster as garbage has become a big issue in Morgantown. Mills stated it is an 8 yard dumpster that has been coordinated with Republic and will be picked up twice a week but can do more if necessary. Bossio expressed that the dumpster does not seem big enough for the proposed structure.

Fletcher noted the location of the dumpster could be increased.

Bossio referred to the landscaping on Willowdale and asked if they were proposing the minimum required. Mills confirmed.

Burton referred to the parking area along Junction Street and asked if the space is wide enough to get in and out of the spaces as proposed. Mills explained the area is 20 feet wide from the edge of Junction to the edge of parking area and there would not be green space as they are asking for relief.

Shaffer asked how wide the sidewalks would measure and how they would be tied in. Mills explained the sidewalks would be three feet, ten inches wide and would be tied in the top along Junction and to the six foot sidewalk along Stewart. Fletcher noted the front of the structure would be facing Willowdale.

Papandreas asked what would be put into place on the upper parking area along Junction if the landscaping was being omitted. Mills stated the area will be some sort of hard surface depending on what the developer requests.

Burton asked if there would be a drain of some sort to manage run off on Junction Street. Mills explained there would be a provision in place but plans have not been made that far in advance.

Papandreas referred to area along Junction and asked if landscaping could be placed in the area along side of the building. Fletcher noted the parking spaces would be in the right-of-way if repositioned to allow for landscaping.

Bossio asked how many ADA's are required for the proposed project. Lloreda explained only one ADA is required up to 25 parking spaces. The reason more than one ADA is being proposed is because of the accessible unit along Junction and the commercial spaces along Willowdale.

Cardoso referred to the variance on cladding materials and asked for further clarification. Mills explained they are considering brick, stucco or stone but have not decided on a certain material. The variance relief would give them latitude when making the decision.

Bossio referred to the fenestration ratio and asked for further explanation. Mills explained the ratio was driven by the program and the lay out of the units. They did not want to make a big commercial unit on the first floor and most glass is internalized to be respective of the neighborhood. Bossio agreed.

There being no further comments or questions by the Board, Bossio asked if anyone was present to speak in favor of or in opposition to the request.

Bossio recognized Charlie Byer of 420 Raymond Street who stated the area is a gateway to the Wiles Hill neighborhood with heavy traffic and congestion at times. Byer suggested to flip flop the project by having the parking area on Willowdale which will avoid the canyon affect and allow for better visibility at the corner of Willowdale and Stewart Street.

Bossio asked for further clarification on canyon affect. Byer explained the proposed project does not conform to the neighborhood characteristics.

Bossio explained there would be access problems with elevation changes if building were to be reversed. Byer understood but feels the proposed project would be better for the community if reversed.

Bossio declared the public hearing closed.

Bossio invited Mills to the podium for a chance at rebuttal. Mills stated that many scenarios for the layout of the building were reviewed but felt the current plan is architecturally and respective to the neighborhood. The City Engineer has visited the property and stated there were no issues with the site lines and the current proposed design.

Fletcher noted that the proposed height and corner of the building will not present a site triangle issues when looking up the hill of Willowdale Road. If the project were reversed, then the driveway entrance would be placed in the intersection of Junction and Willowdale which would not be best access management practices.

There being no further questions of the petitioner, Bossio asked for Staff recommendations.

Fletcher read the Staff recommendations.

Fletcher noted an email was received by Staff from Douglas Johns in opposition to the proposed project.

Cardoso referred to the parking spaces parallel to Junction Street and asked Board members for comments of proposed spaces. Papandreas expressed he would rather see green space than parking. Bossio stated it is not the Boards job to make the plan work and feels it is a good project.

Cardoso stated an alternative to the proposed project is if the parking spaces were omitted along Junction and then a different variance relief could be requested as they wouldn't meet the required number of spaces.

Cardoso expressed concerns that the proposed parking spaces were planned along Junction only to meet the minimum number of parking requirements. Otherwise only the ADA space would be located along Junction and the rest could be used as green space.

Fletcher explained that parking along Junction is a challenge as it is a very narrow street.

Papandreas asked if there is adequate parking and will there be in the future if the nature of businesses change with different ownership.

Burton noted an updated structure would be more visually appealing and increase the value to the neighborhood. The restriction is the property is bounded by three major roads which makes designing the property difficult. Bossio agreed and asked if the property has been designed too big and caused a self-imposed hardship.

Papandreas expressed the building will be an attractive gateway to the neighborhood. Bossio agreed.

Fletcher stated the issue is the number of parking spaces and the property being bound on three sides. If they built a wide building in front of Willowdale Road and tucked the parking behind the building, they would be dealing with grade issues that would require a retaining wall. Bossio noted then the structure would require an elevator to get to the second floor.

Shaffer expressed favor in the design which allows for spaces needed on Junction Street.

Bossio expressed favor in the design and noted that in order to recoup finances then they need to maximize the development. The question is if they are maximizing too much and expressed concerns with the 6 foot sidewalk.

Burton noted most of the sidewalks in the area are only 3 feet wide. Bossio expressed concerns with consistency as there are 6 foot sidewalks being installed on a new development in the Suncrest area.

Cardoso expressed that 6 foot sidewalks would benefit the neighborhood as it is a larger development that includes 7 apartments.

Shaffer stated he does not see anything about the development that is a deal breaker and expressed favor in the project.

Papandreas stated that parking is a concern and asked where overflow parking would be located as tenants would have guests. Omitted the second floor would decrease the threshold for parking.

Bossio stated that more properties will be developed in the future and asked if variance relief would be granted for future developments as the Board has to remain consistent.

Papandreas expressed favor in the project but noted neighbors have the right to make sure the project can contain itself.

Cardoso noted that according to the code the project has met the number of parking spaces. However, if the Board denies the project then they will redesign the development and then come back asking for a parking variance relief with less spaces than currently being proposed.

Bossio recognized John Rice, developer of property at 502 Stewart Street.

Burton asked Rice if he owned property within 300 feet of development that could be used for additional parking. Rice confirmed and explained he owns property across the street.

Rice explained the structure was designed to eliminate backing out onto Stewart Street. Cardoso noted the Board is okay with parking along Stewart Street.

Bossio explained to the Board that landscaping was eliminated along Junction Street in order to meet parking requirements.

Bossio asked for the parking requirements for a convenience store. Fletcher referred to the Planning and Zoning code and stated that three spaces would be required per 1,000 square feet of sales area.

Bossio invited Mills back to the podium and asked how many square feet is planned for the sales area of the convenience store. Mills stated a little under 2,000 square feet is planned for the sales area. Bossio asked for number of employees on busiest shift. Mills explained that one space has been planned for an employee to total 9 parking spaces allotted for the convenience store.

Burton noted they exceed parking requirements by two spaces. Mills confirmed and explained they have planned for worst case scenario with future stores to allow for adequate parking.

Fletcher referred to the Planning and Zoning Code and explained parking requirements for a barber shop and a restaurant.

Bossio expressed his main concern was the size of the sidewalks. Shaffer expressed there would be more pedestrian traffic than automobile as the development is within close proximity to campus.

Mills explained they were using existing sidewalk to save money but there is an option to replace it if necessary. Bossio asked if the sidewalk could be bigger without affecting the footprint of the building. Mills confirmed.

Rice explained there is a guardrail in between the building and the sidewalk that will need to remain. Shaffer agreed.

Fletcher noted the existing sidewalk is in the City right-of-way.

Shaffer made a motion to find in the affirmative for the all the Findings of Facts for V14-44 as revised by Staff; seconded by Burton. Motion carried 4-1 with Cardoso voting nay.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

The proposed parking layout plan appears to significantly improve public safety by eliminating the existing continuous curb cut along and back-out movements onto Stewart Street with a managed two-way driveway access and providing parallel spaces 10 to 12 feet away from the edge of pavement for Junction Street.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

The development site is bound on three sides by public rights-of-way including Willowdale Road, Stewart Street, and Junction Street. Additionally, the elevation of the site drops 28 feet from Junction Street to Stewart Street. These conditions appear to significantly reduce site design options for developing requisite parking spaces with access to two streets in a manner that will not encroach into the area between the building line and adjoining street right-of-way. No parking spaces are provided between the front of the building and Willowdale Road. Additionally, the parking spaces along Stewart Street only encroach by less than one (1) foot, which cannot be remedied without sacrificing the proper design width of the internal drive aisle.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

This multi-use building contributes to a positive urban infill due to the placement of it within a walkable community. This area is currently pedestrian friendly with sidewalks that connect two well-populated areas of Morgantown. A new sidewalk shall be incorporated along Stewart Street. The existing sidewalk along Willowdale Road will be maintained. The current parking count of 12 will be increased to 27. The parking are off Stewart St. will have a controlled entrance drive and eliminated the existing mountable curb and condition of patron backing directly into the street. The parking areas on Stewart Street and Junction Street offer direct and easy access for pedestrians from the car to the building, as well as coherent circulation routes. An efficient means of layout has been planned to leave a 10' buffer for landscaping on Stewart Street, which increases aesthetics and will lessen runoff water.

The proposed parking layout is designed for the site that is challenged with three bordering public rights-of-way and elevation changes while significantly improving public safety by eliminating back-out movements onto Stewart Street, separating pedestrian and vehicular flow, and incorporating best access management practices. Additionally, the location of the parallel spaces along Junction Street provides for an accessible route to the Level 2 nonresidential tenant spaces and the accessible dwelling unit.

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

The encroachment of the parking spaces beyond the building line along Stewart Street is less than one (1) foot, which cannot be remedied without sacrificing the proper design width of the internal drive aisle. The site has been designed to maximize best access management practices with parking spaces for more frequent trip generating uses accessing Stewart Street. The five (5) parallel spaces along Junction Street will serve as storage parking for the residential uses on the upper floors of the proposed building and resulting in less frequent trip generation along the narrow street that primarily serves neighboring residential uses. Finally, the location of the parallel parking spaces along Junction Street

provides an accessible route to Level 2 nonresidential tenant spaces and the accessible dwelling unit.

Shaffer moved to approve V14-44 without conditions; seconded by Burton. Motion carried 4-1 with Cardoso voting nay.

Shaffer made a motion to find in the affirmative for the all the Findings of Facts for V14-45 as revised by Staff; seconded by Papandreas. Motion carried 3-2 with Cardoso and Bossio voting nay.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

The parking areas on Stewart Street and Junction Street offer direct and easy access for pedestrians from the car to the building, as well as coherent circulation routes. An efficient means of layout has been planned to leave a functioning 10' buffer for landscaping and a sidewalk on Stewart Street, which increases aesthetics and will lessen runoff water. This arrangement greatly improves the current condition. Additional landscaping will be provided between the proposed building and the adjacent residential building in addition to the preservation of existing vegetation. Shared access to the new dumpster area will be provided to the adjacent property owner in the place that a 10' buffer would prohibit.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

The size and placement required to establish good site flow and attractive rentable space requires the 10' buffer to be located against the street, and incorporate the sidewalk along Stewart St. Layout of the Junction Street parking spaces allows separation from the lower retail level for the residential dwellings. This parking lot is also located at an appropriate height to allow Level 2 occupants an accessible means of access.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

This area is currently pedestrian friendly with sidewalks that connect two well-populated areas of Morgantown. The existing sidewalk along Willowdale will be protected. One new sidewalk will improve pedestrian flow along Stewart St., and will be incorporated into a 10' buffer between Stewart St. and the building which increases aesthetics and will lessen runoff water. An accessible route will be granted to Level 1 and Level 2 occupants. Two properties will have access to one dumpster. Ease of use between the parking lot and the building will be provided with walkways in lieu of landscaped termination islands. Vehicular turning radius will be improved with the use of hardscape instead of planting bed near parking space number 15.

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

With parking spaces arranged 10'-0" from Stewart St., and those along Junction, the parking number required by the uses in the building will be upheld. Additional landscape will be provided as a buffer, though not one designed for the entire length of the property division. Termination islands are near other landscape buffers that have been proposed to adhere to city code standards.

Shaffer moved to approve V14-45 with the condition that the minimum landscaping materials and planning location standards be observed to the greatest extent practicable given and site

visibility and/or overhead and underground utility restrictions; seconded by Burton. Motion carried 3-2 with Cardoso and Bossio voting nay.

Shaffer made a motion to find in the affirmative for the all the Findings of Facts for V14-46 as revised by Staff; seconded by Papandreas. Motion carried unanimously.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

Providing a an accessible route to the accessible dwelling unit on Level 2, which is located at or near to the grade of Junction Street, furthers fair housing choice and opportunities.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

The proposed building will have seven (7) one-bedroom dwellings. Six of these units will be located on Level 3. One of these units shall be accessible per Building Code and Fair Housing Act. Without the use of an elevator, this requirement may be achieved by locating it on the second level, at or near the grade with Junction Street.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

Providing an accessible route to the accessible dwelling unit on Level 2, which is located at or near to the grade of Junction Street, furthers fair housing choice and opportunities.

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

Six one-bedroom dwellings will be located on the third level, completely above grade. One unit will be located at Level 2, near the existing grade at Junction St. This location allows for one residential dwelling to be accessible without the otherwise unreasonable expense of an elevator.

Shaffer moved to approve V14-46 without conditions; seconded by Burton. Motion carried unanimously.

Shaffer made a motion to find in the affirmative for the all the Findings of Facts for V14-47 as revised by Staff; seconded by Burton. Motion carried unanimously.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

Access to dumpster is provided at the first level, that of retail. Adjacent property owner is willing to allow the location of the dumpster on his property to encourage a good circulation pattern for the proposed project because it is considered an improvement to the neighborhood. Letter of agreement between property owners has been submitted.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

Location of the dumpster in this location will promote ease of circulation within the proposed parking lot, and allow best access for waste authority vehicles and eliminates the adjoining property owner's

dumpster location that appears to partially encroach into the public right-of-way of Junction Street and the petitioner's property.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

The proposed building size, and number of parking spaces have been defined by the best use and subsequent required need of this building in this location. Tenants will appreciate a dumpster located at the level of retail business and easily accessed by residential units. The proposed location appears to enhance efficiency and safety for waste authority vehicles.

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

The adjacent owner is in agreement. Letter of Agreement between property owners has been submitted. The Board's condition that access easements, covenants, and maintenance obligations run with the affected lands and recorded with the Monongalia County Clerk ensures the longevity of the design solution.

Shaffer moved to approve V14-47 with the condition that access easements, covenants, and maintenance obligations for the dumpster coral facility must be recorded with the Monongalia County Clerk prior to building permit issuance and that said recorded instrument run with all affected lands. Further, that a certified recorded copy of said instrument must be filed with the Planning Division; seconded by Papandreas. Motion carried 5-1 with Bossio voting nay.

Shaffer made a motion to find in the affirmative for the all the Findings of Facts for V14-48 as revised by Staff; seconded by Burton. Motion dismissed 3-2 with Bossio, Cardoso and Papandreas voting nay.

Burton asked if the variance could be granted with the condition of the sidewalk being no less than 5 feet. Fletcher confirmed.

Fletcher suggested rewording Findings of Fact 4 to find in the affirmative.

Burton suggested reconsidering initial motion and including a condition to the variance request. Bossio agreed.

Cardoso made a motion to reconsider; seconded by Papandreas. Motion carried unanimously.

Cardoso made a motion to find in the affirmative for all of the Findings of Facts for V14-48 as revised by Staff; seconded by Burton. Motion carried unanimously.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

The sidewalk will remain as-is with the exception of the integrated truncated dome pavers at each intersection.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

Improvements to the site did not include the requirement to alter the existing sidewalk.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

The existing sidewalk will remain.

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

Additional sidewalks at the required width will be incorporated along Stewart Street frontage of the project.

Cardsos moved to approve V14-48 with the condition that the sidewalk along Willowdale be improved to a width of four (4) feet or a width compliant with accessibility standards guided by the Federal American's with Disabilities Act, whichever is greater. Motion carried 4-1 with Shaffer voting nay.

Shaffer made a motion to find in the affirmative for all of the Findings of Facts for V14-49 as revised by Staff; seconded by Burton. Motion carried unanimously.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

The building is located between three streets; Junction Street, Willowdale Road, and Stewart Street. The front is considered to be the elevation along Willowdale Road as per the B-1 district. The layout of the building with the required parking aligns best if the façade along Stewart Street is considered the front, which offers the best access between the parking lot and retail spaces. With this layout, the façade at the first level along Willowdale Rd. is considered the back wall. Windows have been provided to allow for maximum consideration to this variance. At levels 2 and 3 windows have been provided at a maximum to serve the interior occupants in the best capacity. Consideration of this façade as one that is facing west has also been examined to assure heat gain affecting the interior occupants is not a future problem to the owner. The proposed building facades maintain similar materials used in nearby properties.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

The variance is in effect of multiple considerations with how to site, and access the building for best circulation in this neighborhood. Grade at this façade transitions from access at building Level 1 and Level 2, as one moves from Stewart St. to Junction St. The facades perpendicular to this side offer ease of access to the building at multiple levels, and have storefronts with double-door openings that offer increased fenestration percentages than the front façade. The proposed project contributes to a positive urban infill due to the placement of it within a walkable community, and the proposed manufactured stone on the tower elements are prominent and aesthetically pleasing.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

Maximum fenestration at the front façade is not desirable. Due to the location of the building on site, afternoon sun may contribute to unnecessary heat gain. At level 1, this façade is the rear retail wall. Level 2 and Level 3 offer more windows than Level 1. Manufactured stone provides easier installation and eliminated the need for special footings and support. Hardie board is low maintenance, rot resistant, insect-resistant, and highly fire-resistant.

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

While this front façade has a fenestration percentage below the requirement. Other facades at the building offer higher percentages of glazing. The building offers a combination of materials that are aesthetically pleasing, and resistant to natural conditions such as high and freezing temperatures, rain and insects.

Shaffer moved to approve V14-49 without conditions; seconded by Papandreas. Motion carried unanimously.

Bossio reminded Mr. Mills that the Board's decision can be appealed to Circuit Court within thirty days of receiving written notification from the Planning Division and that any work related to the Board's decisions during this period would be at the sole financial risk of the petitioner

- E. BA14-03 / Central Place, LLC / 494 Spruce Street:** Request by Attorney Bryan Edwards, on behalf of Central Place, LLC, for an Administrative Appeal related to information provided in the Staff Report for S14-07-III that was presented to the Planning Commission on September 11, 2014; Tax Map 26, Parcels 245 and 246; B-4, General Business District.

Fletcher presented the Staff Report.

Bossio recognized Attorney Bryan Edwards, on behalf of Central Place, LLC, who stated the City did not follow their own City code and ordinances. Central Place, LLC clearly has standing in the case and has followed all City codes and ordinances in regards to filing the appeal.

Edwards stated the Planning Commission did not follow City ordinances and therefore Central Place, LLC is appealing the process as they have a public interest and standing in the case.

Edwards stated Mr. Fletcher is not an attorney and was not qualified to give legal advice in the matter.

Bossio referred to the West Virginia State Code 8-A and stated it is the Boards' decision to decide if Central Place, LLC has standing in the case.

Simon stated that David Biafora has an interest as a citizen in the community and is concerned that the Planning Commission is not following their own rules.

Bossio asked if a suit could be filed against the City if the Planning Department isn't doing what they are supposed to do. Edwards stated this had been done previously and they were admonished as it wasn't taken to the Board of Zoning Appeals first. Therefore they are making sure to go through the administrative process in order for their case to be heard.

Biafora asked if there have been prior administrative appeals filed before the BZA. Bossio confirmed.

Bossio stated the Board needs to determine if there is standing first according to the West Virginia State 8-A code.

Fletcher agreed he was not qualified to give legal advice but noted there was an attorney present, Wendy Adkins of Jackson Kelly that would not be representing the Board but could answer questions if needed.

Simon asked if the Board had ever addressed standing as an issue prior to allowing a presentation.

Fletcher stated that since 2006 there has never been an Administrative Appeal filed by a third party and explained that if the Board agrees the petitioner doesn't have standing, then they have 30 days to file a writ of cert and the court would decide if there is standing and the process would begin again by coming back to the Board.

Simon asked why standing wasn't an issue at the Planning Commission hearing. Fletcher stated that standing would not be an issue at a Planning Commission hearing as anyone in the public can provide comments during the public portion.

Edwards noted there is nowhere on the petition to appeal that states an issue of standing needs to be raised. There is only a question to list the grounds of appeal, which were listed on the petition.

Edwards read aloud Article 1393.01(A) and stated that Central Place, LLC is personally aggrieved due to the close proximity of project and has standing due to certain laws not being followed which is the whole basis of the appeal. There is an administrative process they are following which requires the case to be brought before the Board of Zoning appeals prior to presenting before a judge.

Shaffer asked if the process was written in a document and asked for further clarification. Edwards explained that a person has to be proven aggrieved but not damaged. Central Place, LLC has followed all laws and ordinances but CA Living has not.

Cardoso explained what it meant for a person to be aggrieved reading from the code and stated that for the Board to consider them to be an aggrieved person then a peculiar injury must be proven by the petitioner.

Biafora stated if the Board doesn't find them to have a standing then they will take it to court and follow the process.

Burton noted that the Board decides whether to hear the appeal. If the Board decides not to hear the appeal then the petitioner can go to circuit court and then on to Supreme Court.

Bossio stated the Board is to decide if the petitioner has standing and if so, then the Board will hear the rest of the case.

Bossio referred to previous cases that have gone before the court system and have been reversed back because they didn't have standing.

Cardoso stated there are West Virginia Supreme Court cases that have interpreted a specific definition of an aggrieved person. In those individual cases, if a person had property that abutted the property in question, they were favorable in claiming an aggrieved person status.

Papandreas referred to a previous case that noted an aggrieved person takes more than just being an adjoining property owner. Cardoso stated that the cases talk about the adjoining property but is not convinced that was the main point of the case.

Shaffer expressed that in order to decide if they have standing then they would need to hear the case first.

Edwards noted his client has three reasons to be an aggrieved party. Traffic that would be created with the proposed development would adversely affect Central Place, LLC. The proposed access that hasn't been approved by the WVDOH is dangerous and will have adverse effects with ingress and egress. Central Place, LLC has had to follow all rules, codes and ordinances and CA Living has not.

Bossio asked if other residents will use the access in question. Edwards confirmed and stated other residents will be affected as well and would have standing.

Bossio invited Wendy Adkins, attorney for CA Living, to sit with the Board Members to offer advice if needed.

Fletcher noted the number of dwelling units and parking spaces being developed are by right.

Fletcher explained that all Developments of Significant Impact are reviewed by the Planning Commission. All variances and conditional uses are reviewed by the Board of Zoning Appeals. Letters are sent to neighboring property owners within 200 feet for those cases.

Biafora stated the letter sent out was for a Development of Significant Impact and not a Major Development of Significant Impact. The case for CA Living was not presented properly.

Edwards stated he had an objection with Ms. Adkins answering questions related to the case as she is not a party to the appeal. Shaffer noted that the BZA has the ability to seek outside help. Biafora suggested tabling the appeal to allow for them to seek outside help.

Bossio asked if he wanted to be able to appeal. Biafora stated he didn't care either way, as he is there to hold the project up.

Cardoso noted that individuals within close proximity have a better argument for standing. Bossio agreed but noted there are other bench marks that need to be presented to the Board.

Bossio noted the City Attorney is not present and suggested using Adkins as legal counsel.

Fletcher noted there was an objection made towards Adkins and he strongly encouraged the Board to speak to counsel to see if allowing Adkins to speak would create a problem in moving forward.

Bossio stated he thinks a counsel should be present in order to make the right decisions.

Edwards stated there is no objection to tabling the appeal if that is what the Board decides to do.

Bossio asked Cardoso if she felt that Central Place, LLC has standing. Cardoso stated the Board is a "trier of fact" and in a normal court room there are no lawyers present and doesn't believe the Board needs to seek legal opinion in order to proceed with the appeal.

Burton suggested tabling the appeal to seek counsel from the City Attorney.

Fletcher stated if the petitioner is stating the information should be presented by an attorney, then the City Administration should provide for that.

Biafora asked if the information presented was written by the City Attorney. Fletcher stated he authored the information but was it was reviewed by the City Attorney.

Bossio asked for explanation of the appeal process concerning public comments. Fletcher said that he believed a public comment portion would be more appropriate when the merits of the case are discussed.

Papandreas stated he did not feel the appeal should be tabled and has no problem doing his job as a Board member. Bossio agreed and suggested the Board move forward with the appeal process.

Bossio explained the Board is governed by WV State Code 8A which explains an aggrieved person and asked the petitioners to explain why they feel they personally are affected to make them an aggrieved person.

Edwards stated that the approval by the Planning Commission was illegal and the proposed building will be illegal if constructed. The proposed building takes up the entire lot and Central Place, LLC is severally aggrieved as their property abuts up against the lot. The ingress and egress to the building has not been approved by the Department of Highways which is to be located close to the stop light on Spruce Street, which will cause a hazard to Central Place and their residents. With regards to the overall impact, Central Place is a developer that had to follow all codes and guidelines with their development. The Board allowed CA Living to proceed when they didn't follow the code. If a city or any governmental unit does not follow its own ordinance, any citizen of that City has standing to bring suit regardless of what West Virginia State Code 8A says.

Papandreas asked what ordinances Central Place was held to that others were not. Edwards explained that Central Place had to petition for a Major Development of Significant Impact, the permit for the West Virginia of Highways had to be submitted before it went before the Planning Commission and the maximum height of the building was only allowed at 6 stories. CA Living did not follow City codes for a mixed use building and is 1,500 square feet short for retail space.

Papandreas asked for the zoning of Central Place when applied for. Biafora explained his project included two different zones which involved seeking a map amendment and variances for a residential building.

Papandreas asked if the height on Central Place was limited because of how it is zoned. Biafora explained they zoned the property at the direction of the City Planner.

Edwards explained that Biafora had to follow all codes and guidelines for which he was zoned and CA Living did not.

Papandreas asked what ordinances were not followed. Simon stated he didn't think the question was relevant because it doesn't pertain to the issue of standing in which Board is here to decide.

Wendy Adkins, attorney for CA Living, stated the Central Place is making statements about how CA Living handled the project and asked to make a public statement on the matter.

Bossio asked Papandreas if his questions were leading to the issue of standing, Papandreas confirmed. Bossio asked Papandreas to continue.

Papandreas asked Simon what CA Living benefited from that Central Place did not and expressed disfavor in Simon's expressions towards his questions.

Biafora stated his development had to fit in the perimeters of a B-4 and R-3 and CA Living was not required to do the same thing and the proposed development will affect the entire community, including many area developers.

Bossio referred to West Virginia State Code 8A and read what it means to be an aggrieved person.

Simon stated that Central Place is personally aggrieved by having property within close proximity of the proposed development.

Cardoso stated that proximity is extremely important when determining an aggrieved person.

Cardoso stated it is irrelevant to talk about what Central Place suffered from the proposed project but what they may suffer moving forward as an aggrieved person.

Biafora stated Central Place will be personally aggrieved by ground coverage, traffic congestion and air space.

Bossio noted that Central Place would be increasing traffic as well. Biafora stated the density is too dense in that area and it's dangerous for this massive development.

Simons stated Central Place has already been approved and constructed and they will be impacted by the proposed development.

Papandreas noted the land use is the same and Central Place and proximity is not the most important issue in this case. The property is located in the downtown business district and the proposed project is appropriate for that land use.

Biafora stated that the Planning Commission did not hear the case as a commercial building mixed-use petition, but rather as just an apartment building.

Papandreas noted that to determine standing, they need to determine what sets Central Place apart from the rest of the community. Biafora stated that as a developer, he followed all of the codes to build Central Place, and CA Living is not being held to the same standards.

Cardoso stated it is more than just land use and proximity would be an issue.

Edwards stated Central Place is aggrieved as they have property abutting the proposed project and they have standing as the same rules were not applied to CA Living as they had for Central Place.

Biafora asked the Board who would have standing if they determined that Central Place did not.

Edwards asked the Board to decide if Central Place has standing.

Burton made a motion that Central Place, LLC established standing as an aggrieved person and, as such, may initiate the present administrative appeal under Case No. BA14-03; seconded by Cardoso. Motion carried 4-1 with Papandreas voting nay.

Fletcher distributed a Staff Report Supplement to the Board members and petitioners.

Simon presented a PowerPoint presentation to explain the reason for appeal.

Edwards noted the project characterized the development as a mixed-use dwelling. The project is a Major Development of Significant Impact and was presented to the Planning Commission as only a Development of Significant Impact. The project meets the definition of mixed use and because it has more than 100,000 square feet, the developer is required to submit all documentation of a Major Significant Development of Significant Impact. The Planning Commission should not have considered the project without required documentation.

Edwards explained all reasons why they believe development is a Major Development of Significant Impact and stated the project needs to be sent back to the Planning Commission to have them comply with all of the requirements of a Major Development of Significant Impact.

Edwards stated the project does not meet the minimum nonresidential floor space and is 1,450 square feet short of the minimum amount of nonresidential floor space.

Edwards stated the project has not been approved by the WVDOH and the Planning Commission should not have accepted or considered the application without an access permit from the WVDOH.

Bossio invited a chance for rebuttal from Fletcher.

Fletcher read the definition of mixed-use dwelling and mixed use development and stated there is a clear distinction between the two as a mixed use development consists of more than one building. The Planning Division denies the notion that the development contains more than one building. Fletcher stated the CA Living development had less than 100 dwelling units and is therefore a Development of Significant Impact.

Fletcher denied the petitioners allegation that the proposed project will not contain requisite non-residential floor space and referred to the Planning and Zoning Code to explain why the proposed project does meet and exceed the minimum nonresidential floor space.

Fletcher denied the petitioners allegation that the proposed project should not have been considered by the Planning Commission because access permits had not been issued by the WVDOH. Fletcher explained that WVDOH requires access permits as part of development approvals and the Planning Commission addressed the access permit in the May 8th, 2014 Staff report which stated, "It is the opinion of the Planning Division that the Planning Commission may

proceed in its review of the present DSI site plan petition relative to final traffic impact analysis approval and WVDOH access permitting by:

- Tabling the present DSI site plan petition until final review and comment by the City Engineer and WVDOH are completed; or,
- Tabling the present DSI site plan petition until final WVDOH access permitting is determined; or,
- Include a condition, should the Planning Commission approve the present DSI site plan petition, that requires WVDOH access permit approval; provided there are no changes in the locations and/or designs, as a result of WVDOH access permit approval, of the proposed driveway entrances illustrated on the plans presented herein.

Fletcher stated that although the Planning Commission did not approve S14-01-III at that hearing, the Commission did not base in whole or in part in its denial decision on the fact that WVDOH access permits were not issued at the time of Site Plan application. In the September 11th, 2014 Staff report, it was stated, "It should be noted that the City and WVDOH follow a collaborative review and comment process for traffic impact studies so that both authorities' concerns are addressed prior to the issuance of access permits. Enforcing a literal application of Article 1385.08(A)(1)(g) will complicate this collaborative review process in terms of ensuring City Administration and Planning Commission capability to fully participate in and influence related decision-making." The Commission did approve Case No. the Commission did approve S14-07-III with the condition listed in the Staff report that stated, "That access permitting from the West Virginia Division of Highways must be obtained; provided, said approval does not alter the arrangement of driveway locations and/or designs illustrated on the site plans reviewed and approved herein. Should access permitting alter the arrangement of said driveway locations and/or designs, than Planning Commission review and approval must be obtained prior to the issuance of any building permit for the site."

Fletcher noted that by including the condition, the Planning Commission followed the Planning Division recommendation and upheld the spirit and intent of the access permit provision by ensuring that the Site Plan approval is not complete until among other provisions, access permits are issued by DOH.

Fletcher referred to the WV State Code 8A which provides that when the Planning Commission approves a Site Plan, its decision is a significant affirmative governmental act that establishes a vested property right which can't be later effected or taken outside of very narrow statutory circumstances and or compensation. The practice of including a site plan approval condition for when DOH access permits must be issued, has been consistently, fairly and equitably applied since the subject provision was enacted by City Council in 2006.

Fletcher referred the WV State Code 8A and stated that the Comprehensive Plan is a guide for governing bodies to make improvements to land and read the code aloud to Board members.

Fletcher noted that Article 1363 of the Planning and Zoning code that refers to Height, Bulk Area and Density provisions, clearly sets forth the operations of standard within the zoning ordinance and reiterated that regulations are specific to each district.

Fletcher explained that shall statements within the Comprehensive and Downtown Strategic Plans must be understood as desired objectives and strategies and the statements used only as

guidelines. The noted minimum and maximum building height strategy is a guideline and not a mandated standard or regulation and has no force or effect of law.

Bossio invited petitioners for chance at rebuttal.

Simon referred to Article 1329.01 of the Planning and Zoning Code which states that the word shall is always mandatory and not discretionary. Simon stated that Article 1385.08 of the code states that all MDSI and DSI applications shall be accompanied by a WVDOH access permit.

Simon noted that CA Living referred to themselves as a mixed use dwelling and referred to Article 1329.02 which states that mixed use property exceeds 100,000 square feet. The proposed project is more than double the threshold size for classification as a Major Development of Significant Impact. Simon referred to Article 1351.01 that states nonresidential floor spaces provided on the ground floor must be at 20 percent lot area. Simon referred to the plans submitted by CA Living and stated there is no ground floor labeled but rather floors labeled P1 and P2.

Simons stated that CA Living has failures to bring right information with the right design before the Planning Commission. The Planning Commission took a liberal interpretation and twisted rules that are clearly written in the code in order to push forward the project.

Biafora expressed he wants to project to fit in the box and be presented to the Planning Commission appropriately.

Bossio invited Fletcher for a chance at rebuttal.

Fletcher referred to the access permit and stated there was no failure to recognize the issue was resolved as it was listed as a condition as part of the approval. The City has worked continuously with DOH to develop the traffic study.

There being no further comments or questions by the Board, Bossio asked if anyone was present to speak in favor of or in opposition to the request.

Bossio recognized James Giuliani of 256 Prairie Avenue, who referred to Webster's Dictionary and read the definition of the word guide and expressed that to guide someone is important in the way they influence people to make decisions. Giuliani referred to mixed-use development and how it is defined by the National Association of Industrial and Office Properties Research and expressed that the project is a mixed-use development

Bossio recognized Dan Hrankowsky of CA Living who stated they are not a mixed-use development as there are not multiple buildings on the site. The site is not flat and includes 22 percent of grade change and design professionals were able to meet the design intent. If the bottom floor was left on the ground floor, it would be buried 22 feet underground. The DOH needs to be a collaborative effort as it doesn't make sense to lock an access in dimensionally when the project is in not in the final phase. CA Living has followed all rules and the project did not require any variances or conditional use requests.

There being no further public comments, Bossio declared the public hearing closed.

Cardoso suggested looking at each allegation separately with discussion.

For petitioner's allegation No. 1, Burton moved that the development of the VFW Post 548 site at the corner of Spruce Street and Willey Street by CA Student Living under Case No. S14-07-III is a "Major Development of Significant Impact"; seconded by Shaffer. Motion passed 4-1 with Papandreas voting nay.

For petitioner's allegation No. 2, Burton moved to uphold the Planning Division's administrative determination that the area and location of requisite nonresidential use provided in Case No. S14-07-III is consistent with the related standards set forth under Article 1331.06(26)(a) and Article 1351.01(J)(2)(b) of the Planning and Zoning Code; seconded by Cardoso. Motion passed unanimously.

For petitioner's allegation No. 3, Burton moved that Case No. S14-07-III should not have been presented to the Planning Commission for consideration prior to West Virginia Division of Highways (WVDOT) issuance of access permits onto Spruce Street and Willey Street as provided under Article 1385.08(A)(1)(g) of the City's Planning and Zoning Code; seconded by Cardoso. Motion carried unanimously.

For petitioner's allegation No. 4, Papandreas moved to uphold the Planning Division's administrative determination that Article 1349.05(B) establishes the maximum building height in the B-4 District as it relates to Case No. S14-07-III and not Section 6.3.1.4 of the 2010 Downtown Strategic Plan Update; seconded by Shaffer. Motion carried unanimously.

Bossio reminded Central Place, LLC that the Board's decisions can be appealed to Circuit Court within thirty days of receiving written notification from the Planning Division and that any work related to the Board's decisions during this period would be at the sole financial risk of the petitioner.

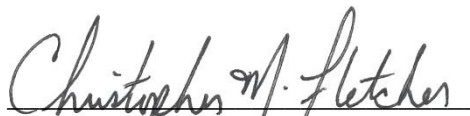
ANNOUNCEMENTS: None.

ADJOURNMENT: 1:05 AM, October 16, 2014

MINUTES APPROVED:

January 21, 2015

BOARD SECRETARY:


Christopher M. Fletcher, AICP